

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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DRAKE K. LAUER

Plaintiff,  
v.  
Case No.08-CV-831

MICHAEL J. ASTRUE, Commissioner of  
Social Security Administration,

Defendant.

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**ORDER**

On October 3, 2008, plaintiff Drake Lauer filed a complaint against defendant Michael Astrue, Commissioner of Social Security Administration, alleging plaintiff's application for Social Security Disability Insurance Benefits was improperly denied. (Docket #1). Plaintiff then filed a Motion for Leave to Proceed *in forma pauperis*. (Docket #2).

The court denies, without prejudice, plaintiff's motion for leave to proceed *in forma pauperis*. The federal *in forma pauperis* statute, 28 U.S.C. § 1915, is designed to ensure indigent litigants meaningful access to the federal courts. *Neitzke v. Williams*, 490 U.S. 319, 327 (1989). To authorize a litigant to proceed *in forma pauperis*, the court must first determine that the litigant is unable to pay the costs of commencing the action. 28 U.S.C. § 1915(a). Second, the court must determine that the action is neither frivolous nor malicious, does not fail to state a claim, and does not seek money damages against a defendant immune from such relief. 28 U.S.C. § 1915(e)(2).

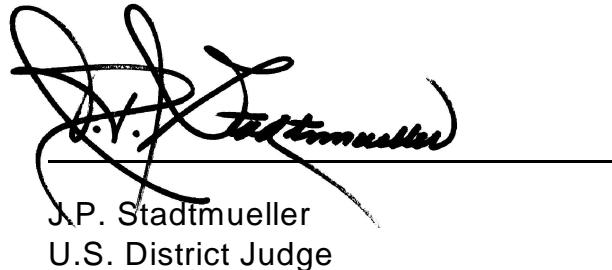
The court does find that plaintiff's action is neither frivolous nor malicious, nor does it fail to state a claim, nor does it seek money damages against a defendant immune from such relief. However, based upon plaintiff's IFP form - an affidavit in which he declares his assets and income under penalty of perjury - the court determines the plaintiff is able to pay the costs of commencing this action. In plaintiff's IFP form plaintiff states that he incurs in excess of \$650 in monthly expenses, and has a monthly income of only \$720.78. However, it also appears plaintiff claims to own a one-half interest in his home, that the total value of the home is \$143,000, and that the home is subject to a \$98,000 mortgage. Thus, it appears that plaintiff and the co-owner (his sister) together have \$45,000 in equity in their home, half of which, \$22,500, belongs to plaintiff. If this is indeed the case, then plaintiff is able to pay the costs of commencing this action. If this is not the case, then plaintiff should re-file an IFP motion, and clarify the facts at issue.

Accordingly,

**IT IS ORDERED** that the plaintiff's Motion for Leave to Proceed *in forma pauperis* (Docket #2) be and the same is hereby **DENIED** without prejudice.

Dated at Milwaukee, Wisconsin, this 18th day of December, 2008.

BY THE COURT:



J.P. Stadtmauer  
U.S. District Judge